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10/674,962	09/30/2003	David F. Bantz	YOR920030325US1 (16872)	5304
23389 7590 05/01/2008 SCULLY SCOTT MURPHY & PRESSER, PC 400 GARDEN CITY PLAZA SUITE 300 GARDEN CITY, NY 11530				
EXAMINER				
LIU, LIN				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/674,962

Applicant(s)

BANTZ ET AL.

Examiner

LIN LIU

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 14-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 14-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/5508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This office action is responsive to communications filed on 02/21/2008.

Claims 1-12 and 14-30 are pending and have been examined.

Continued Examination Under 37 CFR 1.114

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 02/21/2008 has been entered.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-12 and 14-30 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant has amended the claims to include the limitations: "wherein said monitoring further including correlating criteria on which said switching service

provision can be performed including one or more of: the relative prevalence of advertisements or SPAM, the relative usability of a user interface provided at computer device, the relative cost of the service provided by said second service provider as compared to a cost of the service provided by first service provider, a relative cognitive load of a user, and a relative security of said service provided by said second service as compared to the service provided by first service provider" **and inclusively** with claim(s) 10/27. However, the originally filed claims and the specification only require one of the switching criteria. The support for the **inclusive and conditions** of such features of switching criteria recited in the claims 1 and 10, and 18 and 27 are not explicitly described in the present specification.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
6. Claims 1, 2, 4, 6-10, 12-14, 17-21 and 23-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Ishiyama et al. (Publication no.: US 2005/0102415 A1)** in view of **Zhu et al. (PGPUB. No.: US 2003/0167339 A1)** and **Patel et al. (Patent no.: US 7,149,778 B1)**.

With respect to **claim 1**, Ishiyama teaches a method implemented by a computing device for real-time dynamic switching between a first service provider providing a Web-based service for users at a user's computer device over a communications network and a second service provider adapted for providing said service for users at a user's computer device (Ishiyama: fig. 1), said method comprising the steps of:

automatically monitoring said communications network for determining compliance of service-level guarantees by said first service provider at said user's computer device (Ishiyama: page 5, paragraphs 64, 66 & 68, noted that the router R1 monitors and checks on the connectivities with ISPa and ISPb), said monitoring including accessing internal functioning of a service that is currently in use (Ishiyama: page 5, paragraphs 64 & 66, noted that the monitoring including periodically checking the connectivities with the ISP(s) that's in use); and,

upon determining non-compliance of said service-level guarantees, locating a second service provider for providing said service according to said service-level guarantees (Ishiyama: page 6, paragraphs 82 and 89-91, noted that

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when router R1 detects that the primary ISP is disconnected, it sends a message to the communication node N, and the communication node N generates the source address of the new ISP and attaches this address to the header of the packet);

transferring state information associated with said user's use of said service provided by said first service provider at said user's computer device (Ishiyama: page 4, paragraph 50, and page 7, paragraphs 103-105, noted that the connectivity maintains when switching over to the secondary ISP);

terminating provision of said service provided by said first service provider (Ishiyama: page 6, paragraphs 82 and 89-91, noted that the connection with the primary ISPa is disconnected); and

switching service provision to said user's computer device from said second service provider over said communications network (Ishiyama: page 6, paragraphs 82 and 89-91, noted that the service is switched over to the secondary ISPb); and,

migrating said state information maintained up to the time of switching to said service provided by said second service provider, wherein the switching occurs in a manner substantially transparent to the user (Ishiyama, page 7, paragraphs 103-105, noted that the router R1 facilitates the switching of the ISP with node N without interrupting the connectivity), wherein said monitoring further including correlating criteria on which said switching service provision can be performed including one or more of: the relative usability of a user interface provided at computer device, the relative cost of the service provided by said

second service provider as compared to a cost of the service provided by first service provider (Ishiyama, page 5, paragraph 62, noted the fee), a relative cognitive load of a user (Ishiyama, page 5, paragraph 62, noted the transfer speed), and a relative security of said service provided by said second service as compared to the service provided by first service provider.

However, Ishiyama does not explicitly teach a method of replicating state information associated with user's use of service provided by a service provider at user's computer device and a method of correlating criteria on which the switching service provision is based on the relative prevalence of advertisements or SPAM.

In the same field of endeavor, Zhu teaches a method of replicating session information associated with user's use with service provider (Zhu: fig. 15, page 7, paragraph 96).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to incorporate the method of replicating session information as taught by Zhu in Ishiyama's invention in order to keep the client's current session information so that when client switches over to the secondary service provider, it is not necessary to begin the session all over again to complete the desired interaction.

However, the combined method of Ishiyama-Zhu does not explicitly teach a method of correlating criteria on which the switching service provision is based on the relative prevalence of advertisements or SPAM.

In the same field of endeavor, Patel teaches a method of correlating criteria on which the switching service provision is based on the relative prevalence of advertisements or SPAM (Patel: col. 1, lines 33-41, noted that user's ISP is switched to another ISP to prevent unsolicited e-mail.).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to incorporate the method of switching from one ISP to another ISP to prevent unsolicited e-mail as taught by Patel in the combined method of Ishiyama-Zhu's invention in order to keep user's work uninterrupted, and maintain user's e-mail account clear and save user's e-mail space for other important messages.

With respect to **claim 2**, Ishiyama teaches the method of claim 1, further including the steps of:

maintaining state information associated with said user's use of said service provided by said first service provider (Ishiyama, page 4, paragraph 50, noted the ISP state management unit 34).

With respect to **claim 4**, Ishiyama teaches the method of claim 1, wherein said switching is performed automatically without user knowledge (Ishiyama, page 7, paragraphs 103-105, noted that the router R1 facilitates the switching of the ISP with node N without interrupting the connectivity).

With respect to **claim 6**, Ishiyama teaches the method of claim 1, wherein said user includes: an individual (Ishiyama, page 4, paragraph 47, noted that node N may be a user), or a group of individuals.

With respect to **claim 7**, Ishiyama teaches the method of claim 1, wherein said service provided to said users over a communications network includes a service provisioning one or more of: text, multimedia content, images, broadcasts, recipes, functions for a computer (Ishiyama, page 3, paragraph 41, enabling communication between server S on the internet and communication node N), and sensory stimulations.

With respect to **claim 8**, Ishiyama teaches the method of claim 1, wherein the switching includes transfer of service properties (Ishiyama, page 7, paragraph 103, noted the same destination address).

With respect to **claim 9**, Ishiyama teaches the method of claim 1, wherein the first and second services are Web services, a service provided by the switching provider including a Web service (Ishiyama, page 3, paragraph 40, noted that ISPa and ISPb).

With respect to **claim 10**, Ishiyama teaches the method of claim 1, where a switching criterion includes one or more selected from the group comprising: said first service provider is unavailable (Ishiyama, page 5, paragraph 64, noted that ISP is unavailable); the service provided by first service provider is degraded (Ishiyama, page 6, paragraph 82, ISPa is disconnected).

With respect to **claim 12**, Ishiyama teaches the method of claim 1, where a switching criterion is determined based on a potential or predicted relative liability for providing said service (Ishiyama, page 5, paragraph 62, transfer speed).

With respect to **claim 14**, Ishiyama teaches the method of claim 1 where the switching provider comprises one selected from the group comprising: a third party (Ishiyama, fig. 1, router R1), a provider of the first service, a provider of the second service, a provider of both services, a software agent running on the user's computer, a service provider, a company, the government, a video or image content provider, an audio content provider, an insurance agency, a health care provider, an advertiser, a multimedia broadcaster or cable TV company, a game provider.

With respect to **claim 17**, Ishiyama teaches the method of claim 1, where the switching service in a peer-to-peer file sharing system (Ishiyama, fig. 1, Node N and Server S).

With regard to **claim 18** the limitations of this claim are substantially the same as those in claim 1. Therefore the same rationale for rejecting claim 1 is used to reject claim 18. By this rationale **claim 18** is rejected.

With regard to **claim 19** the limitations of this claim are substantially the same as those in claim 2. Therefore the same rationale for rejecting claim 2 is used to reject claim 19. By this rationale **claim 19** is rejected.

With regard to **claim 21** the limitations of this claim are substantially the same as those in claim 4. Therefore the same rationale for rejecting claim 4 is used to reject claim 21. By this rationale **claim 21** is rejected.

With regard to **claim 23** the limitations of this claim are substantially the same as those in claim 6. Therefore the same rationale for rejecting claim 6 is used to reject claim 23. By this rationale **claim 23** is rejected.

With regard to **claim 24** the limitations of this claim are substantially the same as those in claim 7. Therefore the same rationale for rejecting claim 7 is used to reject claim 24. By this rationale **claim 24** is rejected.

With regard to **claim 25** the limitations of this claim are substantially the same as those in claim 8. Therefore the same rationale for rejecting claim 8 is used to reject claim 25. By this rationale **claim 25** is rejected.

With regard to **claim 26** the limitations of this claim are substantially the same as those in claim 9. Therefore the same rationale for rejecting claim 9 is used to reject claim 26. By this rationale **claim 26** is rejected.

With respect to **claim 27**, Ishiyama teaches the system of claim 18, where a switching criterion includes one or more selected from the group comprising: said first service provider is unavailable (Ishiyama, page 5, paragraph 64, noted that ISP is unavailable); and the service provided by first service provider is degraded (Ishiyama, page 6, paragraph 82, ISPa is disconnected).

With regard to **claim 28** the limitations of this claim are substantially the same as those in claim 14. Therefore the same rationale for rejecting claim 14 is used to reject claim 28. By this rationale **claim 28** is rejected.

7. Claims 3 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Ishiyama et al. (Publication no.: US 2005/0102415 A1)** in view of **Zhu et al. (PGPUB. No.: US 2003/0167339 A1)** and **Patel et al. (Patent no.: US 7,149,778 B1)** and further in view of **Ito et al. (Publication no.: US 2003/0036921 A1)**.

With respect to **claim 3**, Ishiyama teaches the method of claim 1, further including the steps of:

establishing criterion for determining service fees (Ishiyama, page 5, paragraph 62, fee) to be charged by a switching service provider for providing said automatic switching (Ishiyama, page 7, paragraphs 103-105, noted that the router R1 facilitates the switching of the ISP with node N without interrupting the connectivity). However, the combined method of Ishiyama-Zhu-Patel does not explicitly teach a method of communicating fee information to said user.

In the same field of endeavor, Ito teaches a method of communicating fee information to said user (Ito, page 3, paragraph 48, noted that the service fee is displayed to the user).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to incorporate the method of displaying the service fee to the user as taught by Ito in the combined method of Ishiyama-Zhu-Patel's invention in order to create a friendly interface to the users with the new service provider.

With regard to **claim 20** the limitations of this claim are substantially the same as those in claim 3. Therefore the same rationale for rejecting claim 3 is used to reject claim 20. By this rationale **claim 20** is rejected.

8. **Claims 5 and 22** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Ishiyama et al. (Publication no.: US 2005/0102415 A1)** in

view of **Zhu et al. (PGPUB. No.: US 2003/0167339 A1)** and **Patel et al. (Patent no.: US 7,149,778 B1)** and further in view of Official Notice.

With respect to **claim 5**, Ishiyama teaches a method of automatically performing the switching without the knowledge of the user (Ishiyama, page 7, paragraphs 103-105, noted that the router R1 facilitates the switching of the ISP with node N without interrupting the connectivity). Ishiyama failed to disclose a method of performing the switching at behest of a user. Official Notice is taken that a user interface was well known in a server computer to one of ordinary skill in the art. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the method of displaying a user interface to the user for entering a command. The advantage of incorporating this method is to notify the user the change of the service provider and the service fee, thus the user will not be over paying for the service fee.

With regard to **claim 22** the limitations of this claim are substantially the same as those in claim 5. Therefore the same rationale for rejecting claim 5 is used to reject claim 22. By this rationale **claim 22** is rejected.

9. **Claim 11** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Ishiyama et al. (Publication no.: US 2005/0102415 A1)** in view of **Zhu et al. (PGPUB. No.: US 2003/0167339 A1)** and **Patel et al. (Patent no.: US 7,149,778 B1)** and further in view of **O'Brien (Patent no.: US 6,587,831 B1)**.

With respect to **claim 11**, the combined method of Ishiyama-Zhu-Patel teaches all the claimed limitations except that they do not explicitly teach a method of determining a criterion based on a result of an auction system.

In the same field of endeavor, O'Brien teaches a method of determining a criterion based on a result of an auction system (O'Brien, col. 8, lines 2-16).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to incorporate the method of determining a criterion based on a result of an auction system as taught by O'Brien in the combined method of Ishiyama-Zhu-Patel's invention in as a design pattern for the filter criteria of the switching service.

10. **Claims 15, 16, 29 and 30** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Ishiyama et al. (Publication no.: US 2005/0102415 A1)** in view of **Zhu et al. (PGPUB. No.: US 2003/0167339 A1)** and **Patel et al. (Patent no.: US 7,149,778 B1)** and further in view of **Frengut et al. (publication no.: US 2002/0046099 A1)**.

With respect to **claims 15 and 16**, the combined method of Ishiyama-Zhu-Patel teaches all the claimed limitations except that they do not explicitly teach a method of generating a fee for switching services based on user satisfaction level. Wherein determining a user satisfaction level according to biometrics obtained from and concerning the user.

In the same field of endeavor, Frengut teaches a method of generating a fee for switching services based on user satisfaction level. Wherein determining

a user satisfaction level according to biometrics obtained from and concerning the user (Frengut, page 2, paragraph 26, noted that the service fee is charged after the user is satisfied with user's preference).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to incorporate the method of generating a service fee based on the user's preference and satisfaction as taught by Frengut in the combined method of Ishiyama-Zhu-Patel's invention in order to present a dynamic and customizable interface to the user.

With regard **claims 29 and 30** the limitations of these claims are substantially the same as those in claims 15 and 16. Therefore the same rationale for rejecting claims 15 and 16 is used to reject claim 29 and 30. By this rationale claims 29 and 30 are rejected.

Response to Arguments

11. Applicant's arguments with respect to claims filed on 02/21/2008 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lin Liu whose telephone number is (571) 270-1447. The examiner can normally be reached on Monday - Friday, 7:30am - 5:00pm, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Cardone can be reached on (571) 272-3933. The

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fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/L. L./

/Lin Liu/
Examiner, Art Unit 2145

/Jason D Cardone/
Supervisory Patent Examiner, Art Unit 2145